

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *JF* D.C.
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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TENN. MEMPHIS

TIG INSURANCE COMPANY,

Plaintiff,

v.

No. 04-2666 B

MERRYLAND CHILDCARE AND
DEVELOPMENT CENTER, INC., et al.,

Defendants.

ORDER DENYING MOTION OF DEFENDANTS MERRYLAND CHILDCARE
AND DEVELOPMENT CENTER, INC. AND TAYLOR TO DISMISS AND TO
EXTEND SCHEDULING ORDER

This diversity action for declaratory judgment was brought by the Plaintiff, TIG Insurance Company ("TIG"), for a determination of its rights and obligations under an insurance policy issued to the Defendant, Merryland Childcare and Development Center, Inc. a/k/a Merryland Kindergarten, Inc. a/k/a Merryland Kindergarten and Day Care Center, Inc. ("Merryland"), with respect to nine lawsuits and six claims filed against the insured, alleging the sexual abuse of minor children in the care of Merryland. Also named in the action are various employees of Merryland, the parents and/or guardians of the minor children and Capitol Indemnity Corporation ("Capitol") which, it has been alleged, was the provider of sexual abuse and molestation insurance to Merryland prior to inception of the TIG policy period.

Before the Court is the motion of Defendants Merryland and Tony Taylor (collectively referred to herein as the "Defendants"), which focuses on Defendant Capitol. According to the complaint, Capitol "is an insurance company doing business and providing insurance coverage in

the state of Tennessee." (Compl. at ¶ 23.) It is the contention of the Defendants in this vague and poorly crafted motion that "[t]he Court should rule that the defendant, Capital [sic] Indemnity Corporation, is NOT a real party-defendant in an action for Declaratory Judgment and therefore should be deemed as a citizen of the State in which the insured is a citizen and dismiss this Complaint for failure of Diversity jurisdiction." (Mem. in Supp. of the Mot. to Dismiss Due to Lack of Juris. and to Extend Rule 16 Scheduling Order at (unnumbered) 4.)

Diversity jurisdiction is permitted under 28 U.S.C. § 1332(a)(1), which provides that "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy . . . is between citizens of different states." "It is well settled that as a matter of statutory construction, diversity of citizenship requires complete diversity between all plaintiffs on one side and all defendants on the other side." Glancy v. Taubman Ctrs., Inc., 373 F.3d 656, 664 (6th Cir. 2004), reh'g en banc denied (Aug. 27, 2004) (citing Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68, 117 S.Ct. 467, 136 L.Ed.2d 437 (1996)).

Subsection (c) of the diversity statute provides that

a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business.

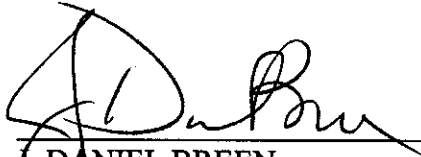
28 U.S.C. § 1332(c)(1).

In its response to the motion, TIG avers that Capitol is a Wisconsin corporation with its principal place of business in that state. TIG, on the other hand, is a California corporation with its principal place of business in Texas. Therefore, it is clear TIG and Capitol are diverse parties and

the Defendants offer no facts or case law supporting a conclusion to the contrary. Indeed, it appears to the Court that the Defendants are attempting to argue that Capitol falls under the exception set forth in the latter part of subsection (c), based upon the fact that the language of the argument somewhat tracks that of the statutory provision. However, pursuant to the plain language of the statute, there must be a "direct action against the insurer of a policy or contract of liability insurance" in order to trigger application of the exception. Clearly, that is not the case here and the Defendants have presented no basis whatever for their position.

Finally, the Defendants contend in conclusory fashion that "[j]udicial economy will be further by dismissing this Complaint." (Mot. to Dismiss Due to Lack of Juris. or Other and Mot. for Extending Scheduling Order at (unnumbered) 2.) No other mention of judicial economy is made in the Defendants' motion papers. Therefore, the Court will not consider the assertion, as it is the movant's responsibility to fashion an argument supporting the relief sought. Accordingly, the motion is not well-taken and is DENIED. Further, the Defendants' conclusory request for an extension of the scheduling order, for which they give no elaboration or explanation whatsoever, is also DENIED.

IT IS SO ORDERED this 13th day of September, 2005.



J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



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Honorable J. Breen
US DISTRICT COURT